

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON FINANCE AND CLAIMS  
SUBCOMMITTEE ON SB 134**

**Call to Order:** By **SEN. JOHN ESP**, on January 30, 2003 at 5:00  
P.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**

Sen. John Esp, Chairman (R)  
Sen. Edward Butcher (R)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee, Vice-Chairman (R)  
Sen. Linda Nelson (D)  
Sen. Jerry O'Neil (R)  
Sen. Joseph (Joe) Tropila (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Committee Secretary  
Lynn Zanto, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 134, 12/30/2002  
Executive Action: None

**{Tape: 1; Side: A}**

**Karla Gray, Chief Justice, Montana Supreme Court**, commented on page 4 and 5 of the bill draft, the state must fund personal services, operating costs, and all other costs associated with district court. The two lines that are just above category B do not need to be in there.

**CHAIRMAN JOHN ESP** asked if it was sub-section (a) that needed to be stricken.

**Chief Justice Gray** said yes, because page 6, 4(c) is where that language properly appears.

**Lisa Smith, Administrative Services Director, Supreme Court,** referred to a comparison between the judicial budget and the executive budget. **EXHIBIT(fcs20a01)** She said she took language out of SB 176 and it explains how the guaranteed share is calculated.

**VICE-CHAIRMAN DAN MCGEE** said he would like to have a presentation on SB 218 and he would like to have **Gordon Morris, MT Assoc. of Counties,** give a brief explanation to the sub-committee. He noted the bill was heard in Judiciary and will probably be referred to this committee for discussion.

**Mr. Morris** advised public defense delivery systems must efficiently and effectively provide high quality, zealous, conflict free representation to those charged with crimes that cannot afford an attorney and poverty is not an excuse to provide less than competent legal representation. He read the title of the bill and explained section 1. Section 2 of the bill establishes that the chief public defender is outside of the state classification on compensation and the pay plan of other state employees. Section 3 is the heart of the bill. Section 4 makes indigent defense a state expense and the responsibility for administering this expense would go to the **Department of Administration.** He felt section 7 needed to be examined concerning salaries. He stated Section 11 is new, with the transition being in 2004; section 12 deals with the property rights of county property being used by public defenders after the transition. One of the most vocal complaints they heard during the transition was the property debate. He finished explaining section 14, 15, and 16 dealing with codification and the effective dates. When the reimbursement program was started, it was housed in the **Department of Commerce.** There is a small portion of the reimbursement program that goes to the **Department of Administration** to fund the **Appellate Defender Commission** and this is one reason why they feel the program could be administered through the **Department of Administration.** He believed that they could directly fund the salaries and the contract out of the reimbursement program by way of dedicating that portion of money on an annual basis to the **Department of Administration.** He stated this figure would be under \$1 million and he also felt the fiscal note was \$5 million overstated.

{Tape: 1; Side: A; Counter 22.3}

**SEN. MIKE WHEAT** asked if the fiscal note was worthless.

**Mr. Morris** said he felt the figures would be correct for salaries and operational costs associated with the public defender either by contract or employees. He said \$930,000 would be in the ballpark and it would not have a net impact on the General Fund if this money came out of the reimbursement program.

**SEN. WHEAT** read technical note number 2 on page 5 of the fiscal note.

**Mr. Morris** said he did not propose that. He proposed \$935,000 for fiscal year 2004 and \$857,000 for fiscal year 2002.

**SEN. WHEAT** read the technical note on the fiscal note and wondered if **MACO** had made that proposal.

**Mr. Morris** advised no, he had not made that proposal. He proposed a budget that was approximately \$12 million for variable costs and the fixed cost at \$7.2 million. None of the variable pot except for the public defender portion would go over to the **Department of Administration**.

**VICE-CHAIRMAN MCGEE** said SB 218 has not been re-referred to this committee yet from Judiciary, but they would like to get some discussion on this bill. He asked if **Director Chuck Swysgood, Office of Budget and Program Planning**, had seen the fiscal note from **MACO**.

**Director Swysgood** advised he had not seen it.

**VICE-CHAIRMAN MCGEE** asked how they currently pay for public defenders and if it is done at the county level.

**Director Swysgood** said no, it is paid for by the indigent defense costs that are in the variable costs that the court pays to the counties.

**VICE-CHAIRMAN MCGEE** asked what else is included in variable costs besides indigent defense costs.

**Director Swysgood** said it is on page 3, of the fiscal note.

**SEN. WHEAT** asked how many of the categories in the fiscal note are included in the variable pot.

**Director Swysgood** said all of them except personal services and fixed costs.

**SEN. JEFF MANGAN** asked if these were the old numbers on the fiscal note prior to the new presentation from two days ago.

**Director Swysgood** said these numbers reflect what was in the executive budget as submitted by the judiciary.

**SEN. MANGAN** asked if those numbers are not related to the new proposal.

**Director Swysgood** said those numbers were based on the original submission. He felt that their fiscal note was correct. It reflects what the indigent cost for county defenders will be in the next biennium. He claimed \$935,000 will not run indigent defense costs.

**SEN. WHEAT** asked about technical note number 2.

**Matt Bugni, Office of Budget and Program Planning**, testified they do have a proposal that outlines the district court assumption for 2004 and 2005. He said for the variable pot it outlines \$7.7 million for each year.

**SEN. WHEAT** asked where did they get that number. **Matt Bugni** said this number came from a proposal by **MACO**.

{Tape: 1; Side: B; Counter 6.4}

**SEN. MANGAN** asked if some of these costs came from line 20 and are they still standing by this fiscal note and doesn't the fiscal note need to be redone.

**Director Swysgood** said there has not been action taken on the new proposal, so he cannot create a new fiscal note until that is done.

**VICE-CHAIRMAN MCGEE** asked **Chief Justice Gray** to comment.

**Justice Gray** said she is concerned they are working on this bill before they have decided what direction they are taking with SB 134. The concept of SB 218 is very sound, but there are several things, like additional costs, that are a concern. In section 1, the commission would get travel reimbursement, but they need to look at what the commission's duties are on page 2, lines 8-20. This is a large amount of work for a volunteer group to do without any staff support, none is provided for, and she felt it needed to be added. On page 6, section (5), is the right to counsel section and if there is an indigent defendant they must have counsel if the charge is a misdemeanor. Most misdemeanors in this state are within the sole jurisdiction of courts of limited

jurisdiction and they receive appointed council, but those were costs that were never state assumed. She discussed the fiscal note and felt some of it is incorrect. It would run this state millions of dollars because they would have to pick up things like first offense DUI s, etc. She discussed new section 7 of the bill and said the last thing they want to do is set the salaries. The statutory level for a county attorney in a class 3 county is \$50,000. She said salaries must be separated out by classes of counties as caseloads per county are different. She felt they might get applicants who are not qualified for the job or can't handle the caseload because \$50,000 looks good to them. On page 9, new section 11, subsection (4), the language once again brings county employees over to the state with accumulated sick and vacation leave and this is very difficult for state assumption. When they are talking about indigent defense and public defenders they are talking about criminal defendant's constitutional rights and they could be infringed upon if they leave these spots open for 50 weeks to cover accumulated sick and vacation time. Regarding the fiscal note, page 5, under the technical notes, if they are going to consider the proposal by the judiciary all variable costs are going to go into the \$7.5 million restricted pot for the biennium. They couldn't take all of the variable cost money and move it over to indigent defense and that appears to be what **MACO** is proposing in the fiscal note under the technical notes. If the committee is going to consider this bill, she asked they please look at it and fund it carefully.

{Tape: 1; Side: B; Counter 24.1}

**SEN. WHEAT** asked if he voted for SB 218 and wanted to fund it appropriately, where do they find the numbers to allow that to happen. He wondered if they look at the judiciary's proposed new budget, **MACO**'s suggestions, etc. and how do they find accurate figures on indigent defense, etc.

**Chief Justice Gray** said the answer is they do not find hard numbers on variable costs, etc. because they do not even have one year of hard data yet. She said all budgeting is predicted and they do not have the data for indigent costs, etc. It is a concern if they create another spin off for state assumption that will create more problems before they can figure out where they are.

**SEN. WHEAT** asked if indigent defense would be paid out of the variable pot under the proposal by the judiciary.

**Chief Justice Gray** said yes that is one of the categories included in the variable pot of money.

**SEN. WHEAT** asked if SB 218 was tabled this session, would indigent defense still be paid for.

**Chief Justice Gray** replied that was correct.

**Director Swysgood** said when the fiscal note for SB 218 was done, it was based on figures submitted by the Judiciary for variable costs. Indigent defense was \$8,240,000 one year and \$9,436,000 the second year. That is one of the areas that created the \$17 million difference from the executive budget and the request from the Judiciary which brought about SB 134. If they accept the Judiciary's new proposal which is about a \$2 million difference, then these numbers are going to change.

**VICE-CHAIRMAN MCGEE** said they have no idea how many indigent defendants they are going to have, but he has a problem with not knowing some previous data.

**Director Swysgood** said they do not have any numbers on 2002 yet or the current year 2003. He stated indigent defense costs for 2001 were about \$3.5 million .

**VICE-CHAIRMAN MCGEE** asked if they funded SB 134 with the executive budget, and the Judiciary needed additional funding, could they do it with a supplemental.

**Director Swysgood** said as long as they are in session, that is not possible.

**VICE-CHAIRMAN MCGEE** said if they were to pass a budget that is \$2.4 million under what the Justice department has proposed could they come back later with a supplemental.

**Director Swysgood** said yes, the Judiciary is allowed to ask for a supplemental.

**Mr. Morris** advised it was never their intention to move the entire \$7.7 million over for public defender purposes. He said the intent was only to move that portion to adequately fund the salaries and operational costs. He referred to the fiscal note, item 7, page 2, which gives them an average of \$3.5 million for the public defender costs for the past year.

**SEN. MANGAN** said he would like the Chief Justice to respond to the supplemental issue.

**Chief Justice Gray** said they have had this conversation before. This is not contingency funding such as emergency costs that cannot be predicted like forest fires, etc. With indigent defense

and other variables, it is not comparable. They are difficult to predict, but they are anticipated costs. They have the indigent defense costs for 2002 and they are about \$1 million higher than 2001. She does not believe in the supplemental process and stated if the legislature can reasonably fund state departments then that should be done and those departments should follow their budget. She believes the supplemental process is a disincentive to good budget management. She would rather have \$2.4 million cut out of the variable pot than be forced into a supplemental situation. She does not recommend this cut as it would put more responsibility on the counties, but she would rather have that than the supplemental appropriation.

{Tape: 2; Side: A; Counter 11.4}

**Commissioner Jim Reno, Yellowstone County,** said the counties feel they are enabling poor behavior on behalf of the state. In SB 176, the counties were asked what it cost local governments to run the court system and they provided those numbers. If the state cannot run the courts on what local governments did, then the difference should be made up somewhere else rather than making the counties their supplemental source.

**SEN. WHEAT** asked if the counties had looked at the proposed budget from the judiciary which setting the variable pot at \$7.5M per year and reimburses the counties at 65 percent.

**Mr. Reno** said yes, and they do not like it. SB 176 set a sunset of June 30 of this year and the public defender responsibility fell upon the state. They keep changing the rules and it is very difficult to manage their system. As counties, they never allowed a grant person to become permanent. When the grant was done the job was no longer there. In many counties those grant employees became full time or state employees when the system was changed over and it is very difficult to manage such things from the state level.

{Tape: 2; Side: A; Counter 15.9}

**Peggy Beltrone, Cascade Co. Commissioner,** said she is in full support of funding the justice system. What scares them is when the responsibility for the costs are not the same as the organization that is managing the court. She said several years ago in Cascade County, they were the only court that did not have law clerks for their judges because they could not afford them. She said in a situation where they do not have control of the court at the local level, but they are asked to cover what the state doesn't budget for, they do not have the option to tell a judge that they cannot fund law clerks, secretaries, etc. She

said they have to look at other budgets to cut such as laying off a deputy sheriff or treasurer worker, etc. and this is bad management. The people who manage the employees also need to manage the employee costs. They support funding for the courts at the state level, but to separate costs that the counties must fund is bad management practice.

**Chief Justice Gray** asserted she does not appreciate being called a bad manager. **MACO** stood before them and said that the numbers provided by the counties was only the tip of the iceberg. People who have been hired for grants do not become permanent, they are hired only for the duration of the grant. There has been no bad management of the nightmare that was sent to them. If the counties want to keep managing the district courts it might be a consideration.

**SEN. MANGAN** said there are a number of the members on this committee looking at all of the options to try and make it work and they appreciate everyone's input.



**ADJOURNMENT**

Adjournment: 6:30 P.M.

---

SEN. JOHN ESP, Chairman

---

PRUDENCE GILDROY, Secretary

JE/PG

**EXHIBIT (fcs20aad)**